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AMERICAN CORRECTIVE COUNSELING  
SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

ELENA DEL CAMPO, et al.

Plaintiffs,

vs.

AMERICAN CORRECTIVE  
COUNSELING SERVICES, INC., et al.

Defendants.

No. C 01-21151 JW PVT

**DEFENDANT'S ANSWER TO  
AMENDED CONSOLIDATED  
COMPLAINT**

**JURY TRIAL DEMANDED**

Defendant AMERICAN CORRECTIVE COUNSELING SERVICES, INC. ("ACCS")  
hereby answers the complaint of plaintiffs ELENA DEL CAMPO, et al., as follows:

1. Defendant admits that plaintiffs purport to bring this action on behalf of themselves and all others similarly situated, and on behalf of the general public. Defendant admits that it operates in several California counties, and in counties throughout the United States. Defendant denies the remaining allegations contained in paragraph 1.

2. Defendant denies that subject matter jurisdiction exists in this case under either

1 28 U.S.C. §1331 or 15 U.S.C. §1692k(d) or, even if it did, that the court should exercise  
 2 supplemental jurisdiction pursuant to 28 U.S.C. §1367 over plaintiff's state law claim(s).

3 3. Defendant is without sufficient knowledge or information to form a belief as to  
 4 the truth of the allegations contained in paragraph 3, and on that basis denies each and every  
 5 allegation contained therein.

6 4. Defendant admits that it is a corporation, with its principal place of business in  
 7 California at the stated address. Defendant denies that it is in the business of "collecting  
 8 dishonored checks" or that it operates under color of state law, which is a legal conclusion,  
 9 and further, denies the remaining allegations, if any, contained in paragraph 4.

10 5. Defendant admits that Don R. Mealing was employed as President of ACCS,  
 11 but denies the remaining allegations contained in paragraph 5.

12 6. Defendant admits that Lynn R. Hasney was employed by ACCS as Executive  
 13 Vice President of operations, but denies the remaining allegations contained in paragraph 6.

14 7. Defendant denies that it is in "the collection business" and that Inc.  
 15 Fundamentals "works in concert" with it. Defendant is without sufficient knowledge or  
 16 information to form a belief as to the truth of the remaining allegations contained in paragraph  
 17 7, and on that basis denies each and every remaining allegation contained therein.

18 8. Defendant denies that it is in "the collection business" and that Fundamental  
 19 Performance Strategies "works in concert" with it. Defendant is without sufficient knowledge  
 20 or information to form a belief as to the truth of the remaining allegations contained in  
 21 paragraph 8, and on that basis denies each and every other allegation contained therein.

22 9. Defendant denies that it is in "the collection business" and that Fulfillment  
 23 Unlimited, Inc. "worked in concert" with it. Defendant is without sufficient knowledge or  
 24 information to form a belief as to the truth of the remaining allegations contained in paragraph  
 25 9, and on that basis denies each and every other allegation contained therein.

1           10. Defendant denies that it is in "the collection business" and that ACCS  
2 Administration, Inc. "worked in concert" with it. Defendant is without sufficient knowledge  
3 or information to form a belief as to the truth of the remaining allegations contained in  
4 paragraph 10, and on that basis denies each and every remaining allegation contained therein.

5           11. Defendant admits that Mr. Green was employed by ACCS as a Case  
6 Coordinator. Defendant denies the remaining allegations contained in paragraph 11.

7           12. Defendant denies the allegations contained in paragraph 12.

8           13. Defendant admits that Mr. Kramer is employed by ACCS as a Case  
9 Coordinator. Defendant denies the remaining allegations contained in paragraph 13.

10          14. Defendant admits that Ms. Lopez was employed by ACCS as a Case  
11 Coordinator. Defendant denies the remaining allegations contained in paragraph 14.

12          15. Defendant is without sufficient knowledge or information to form a belief as to  
13 the truth of the allegations contained in paragraph 15, and on that basis denies each and every  
14 allegation contained therein.

15          16. Defendant denies the allegations contained in paragraph 16, including that  
16 Defendant has acted under color of state law, which is a legal conclusion.

17          17. Defendant denies the allegations contained in paragraph 17.

18          18. Defendant denies the allegations contained in paragraph 18.

19          19. Defendant admits that it is not an employee of the District Attorney of Santa  
20 Clara County or an employee of any other California government entity.

21          20. Defendant is without sufficient knowledge or information to form a belief as to  
22 the truth of the allegations contained in paragraph 20, and on that basis denies each and every  
23 allegation contained therein.

24          21. Defendant admits that it has contracted with district attorneys in several  
25 California counties to administer misdemeanor bad check restitution programs. Defendant  
26

denies the remaining allegations contained in paragraph 21.

22. Defendant denies the allegations contained in paragraph 22.

23. Defendant admits that all of the misdemeanor bad check restitution programs with which it is affiliated in California operate under the same laws and that each program is tailored by the local district attorney. Defendant denies the remaining allegations contained in paragraph 23.

24. Defendant admits that it maintains records pursuant to the terms of its contracts with district attorneys. Defendant denies the remaining allegations contained in paragraph 24.

25. Defendant admits that it receives compensation according to its contracts with district attorneys in California. Defendant denies the remaining allegations contained in paragraph 25.

26. Defendant admits that the Santa Clara County District Attorney receives a portion of the administrative fees as provided in the applicable administrative services contract. Defendant denies the remaining allegations contained in paragraph 26.

27. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27, and on that basis denies each and every allegation contained therein.

28. Defendant admits that on or about June 11, 2001, plaintiff wrote a bad check in the amount of \$95.02 to Fry's Electronics Store in Palo Alto, California, but is without sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 28, and on that basis denies each and every remaining allegation.

29. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29, and on that basis denies each and every allegation contained therein.

30. Defendant admits that an "Official Notice" letter dated October 3, 2001 was sent

1 to plaintiff from the Santa Clara County District Attorney Bad Check Restitution Program,  
 2 that a copy of said letter is attached as Exhibit 1 to the complaint, and that said letter speaks  
 3 for itself. Defendant denies the remaining allegations contained in paragraph 30.

4 31. Defendant admits that plaintiff made a partial payment of \$95.02 to the Santa  
 5 Clara County District Attorney Bad Check Restitution Program, but is without sufficient  
 6 information or knowledge to form a belief as to the remaining allegations contained in  
 7 paragraph 31.

8 32. Defendant denies the allegations contained in paragraph 32.

9 33. Defendant admits that it sent Fry's Electronics \$47.51 in the form of a partial  
 10 payment, which is 50% of the \$95.02. Defendant denies the remaining allegations contained  
 11 in paragraph 33.

12 34. Defendant denies the allegations contained in paragraph 34.

13 35. Defendant admits that a "Notice of Failure to Comply" letter dated November 7,  
 14 2001 was sent to plaintiff from the Santa Clara County District Attorney Bad Check  
 15 Restitution Program, that a copy of said letter is attached as Exhibit 2 to the complaint, and  
 16 that said letter speaks for itself. Defendant denies the remaining allegations contained in  
 17 paragraph 35.

18 36. Defendant admits that an "Official Notice" letter dated December 5, 2001 was  
 19 sent to plaintiff from the Santa Clara County District Attorney Bad Check Restitution  
 20 Program, that a copy of said letter is attached as Exhibit 3 to the complaint, and that said letter  
 21 speaks for itself. Defendant denies the remaining allegations contained in paragraph 36.

22 37. Defendant admits that on or about May 26, 2001, plaintiff wrote a bad check in  
 23 the amount of \$81.99 to Fry's Electronics, but is without sufficient knowledge or information  
 24 to form a belief as to the remaining allegations contained in paragraph 37, and on that basis  
 25 denies those allegations.

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1           38. Defendant admits that on or about December 9, 2001, plaintiff wrote a bad  
2 check in the amount of \$240.00 to the South Peninsula Veterinary Emergency Clinic, but is  
3 without sufficient knowledge or information to form a belief as to the remaining allegations  
4 contained in paragraph 38, and on that basis denies those allegations.

5           39. Defendant admits that a letter dated May 28, 2002 was sent to plaintiff from the  
6 Santa Clara County District Attorney Bad Check Restitution Program, that a copy of said  
7 letter is attached as Exhibit 4 to the complaint, and that said letter speaks for itself. Defendant  
8 denies the remaining allegations contained in paragraph 39.

9           40. Defendant admits that a "Notice of Failure to Comply" letter dated July 1, 2002  
10 was sent to plaintiff from the Santa Clara County District Attorney Bad Check Restitution  
11 Program, that a copy of said letter is attached as Exhibit 5 to the complaint, and that said letter  
12 speaks for itself. Defendant denies the remaining allegations contained in paragraph 40.

13           41. Defendant admits that plaintiff made a partial payment of \$411.99 to the Santa  
14 Clara County District Attorney Bad Check Restitution Program, but is without sufficient  
15 information or knowledge to form a belief as to the truth of the remaining allegations  
16 contained in paragraph 41, and on that basis denies the remaining allegations contained in  
17 paragraph 41.

18           42. Defendant admits that it sent South Peninsula Veterinary Emergency Clinic  
19 \$142.50 and sent Fry's Electronics \$63.44. Defendant denies the remaining allegations  
20 contained in paragraph 33.

21           43. Defendant admits that plaintiff wrote a bad check in the amount of \$250.00 to  
22 the Humane Society of Santa Clara County, but is without sufficient knowledge or information  
23 to form a belief as to the truth of the remaining allegations contained in paragraph 43, and on  
24 that basis denies each and every remaining allegation contained in paragraph 43.

25           44. Defendant admits that an "Official Notice" letter dated March 3, 2003 was sent  
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1 to plaintiff from the Santa Clara County District Attorney Bad Check Restitution Program,  
 2 that a copy of said letter is attached as Exhibit 6 to the complaint, and that said letter speaks  
 3 for itself. Defendant denies the remaining allegations contained in paragraph 44.

4 45. Defendant admits that a "Notice of Failure to Comply" letter dated March 24,  
 5 2003 was sent to plaintiff from the Santa Clara County District Attorney Bad Check  
 6 Restitution Program, that a copy of said letter is attached as Exhibit 7 to the complaint, and  
 7 that said letter speaks for itself. Defendant denies the remaining allegations contained in  
 8 paragraph 45.

9 46. Defendant admits that plaintiff made a partial payment of \$210 to the Santa  
 10 Clara County District Attorney Bad Check Restitution Program, but is without sufficient  
 11 information or knowledge to form a belief as to the truth of the remaining allegations  
 12 contained in paragraph 46, and on that basis denies each and every remaining allegation  
 13 contained in paragraph 46.

14 47. Defendant denies the allegations contained in paragraph 47.

15 48. Defendant admits that a letter dated May 27, 2003 was sent to plaintiff from the  
 16 Santa Clara County District Attorney Bad Check Restitution Program, that a copy of said  
 17 letter is attached as Exhibit 8 to the complaint, and that said letter speaks for itself. Defendant  
 18 denies the remaining allegations contained in paragraph 48.

19 49. Defendant admits that plaintiff wrote a bad check to Glass 4 Less, but is without  
 20 sufficient knowledge or information to form a belief as to the truth of the remaining  
 21 allegations contained in paragraph 49, and on that basis denies each and every remaining  
 22 allegation contained in paragraph 49.

23 50. Defendant admits that an "Official Notice" letter dated April 9, 2003 was sent to  
 24 plaintiff from the Santa Clara County District Attorney Bad Check Restitution Program, that a  
 25 copy of said letter is attached as Exhibit 9 to the complaint, and that said letter speaks for  
 26



1 itself. Defendant denies the remaining allegations contained in paragraph 50.

2 51. Defendant admits that a letter dated June 9, 2003 was sent to plaintiff from the  
3 Santa Clara County District Attorney Bad Check Restitution Program, that a copy of said  
4 letter is attached as Exhibit 10 to the complaint, and that said letter speaks for itself.

5 Defendant denies the remaining allegations contained in paragraph 51.

6 52. Defendant admits that plaintiff wrote a bad check to Gymboree, but is without  
7 sufficient knowledge or information to form a belief as to the truth of the remaining  
8 allegations contained in paragraph 52, and on that basis denies each and every remaining  
9 allegation contained in paragraph 52.

10 53. Defendant admits that an "Official Notice" letter dated November 25, 2003 was  
11 sent to plaintiff from the Santa Clara County District Attorney Bad Check Restitution  
12 Program, that a copy of said letter is attached as Exhibit 11 to the complaint, and that said  
13 letter speaks for itself. Defendant denies the remaining allegations contained in paragraph 53.

14 54. Defendant admits that prior to April 22, 2002, plaintiff wrote a bad check to  
15 Goodwill Industries. Defendant is without sufficient knowledge or information to form a  
16 belief as to the truth of the remaining allegations contained in paragraph 54, and on that basis  
17 denies each and every remaining allegation contained in paragraph 54.

18 55. Defendant denies the allegations contained in paragraph 55.

19 56. Defendant denies the allegations contained in paragraph 56.

20 57. Defendant is without sufficient knowledge or information to form a belief as to  
21 the truth of the allegations contained in paragraph 57 and thus denies each and every allegation  
22 contained therein.

23 58. Defendant denies the allegations contained in paragraph 58.

24 59. Defendant admits that prior to January 2003, letters were sent to plaintiff from  
25 the Santa Clara County District Attorney Bad Check Restitution Program. Defendant denies  
26



1 any remaining allegations contained in paragraph 59.

2 60. Defendant admits that a letter dated January 2, 2003 was sent to plaintiff from  
3 the Santa Clara County District Attorney Bad Check Restitution Program, that a copy of said  
4 letter is attached as Exhibit 12 to the complaint, and that said letter speaks for itself.  
5 Defendant denies the remaining allegations contained in paragraph 60.

6 61. Defendant admits that a "Notice of Failure to Comply" letter dated May 28,  
7 2003, was sent to plaintiff from the Santa Clara County District Attorney Bad Check  
8 Restitution Program, that a copy of said letter is attached as Exhibit 13 to the complaint, and  
9 that said letter speaks for itself. Defendant denies the remaining allegations contained in  
10 paragraph 61.

11 62. Defendant admits that a letter dated June 9, 2003 was sent to plaintiff from the  
12 Santa Clara County District Attorney Bad Check Restitution Program, that a copy of said  
13 letter is attached as Exhibit 14 to the complaint, and that said letter speaks for itself.  
14 Defendant denies the remaining allegations contained in paragraph 62.

15 63. Defendant admits that in 2005, plaintiff wrote a bad check in the amount of  
16 \$26.62 to Cigarettes R Cheaper. Defendant is without sufficient knowledge or information to  
17 form a belief as to the truth of the remaining allegations contained in paragraph 63, and on that  
18 basis denies each and every remaining allegation contained in paragraph 63.

19 64. Defendant admits that an "Official Notice" letter dated November 23, 2005 was  
20 sent to plaintiff from the Sonoma County District Attorney Bad Check Restitution Program,  
21 that a copy of said letter is attached as Exhibit 15 to the complaint, and that said letter speaks  
22 for itself. Defendant denies the remaining allegations contained in paragraph 64.

23 65. Defendant is without sufficient knowledge or information to form a belief as to  
24 the truth of the allegations contained in paragraph 65, and on that basis denies those  
25 allegations.

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66. Defendant admits that home study materials were sent to plaintiff from the Sonoma County District Attorney Bad Check Restitution Program, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 66, and on that basis denies each and every remaining allegation contained in paragraph 66.

67. Defendant denies the allegations contained in paragraph 67.

68. Defendant denies the allegations contained in paragraph 68.

69. Defendant denies the allegations contained in paragraph 69.

70. Defendant admits that most of the bad checks which are referred to it come from merchant victims. Defendant denies the remaining allegations contained in paragraph 70.

71. Defendant denies the allegations contained in paragraph 71.

72. Defendant admits that the Santa Clara County District Attorney Bad Check Restitution Program discourages merchant victims from communicating with bad check writers after bad checks have been referred to the program. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 72, and on that basis denies each and every remaining allegation contained in paragraph 72.

73. Defendant denies the allegations contained in paragraph 73, but admits that letters from the Santa Clara County Bad Check Restitution Program speak for themselves.

74. Defendant denies the allegations contained in paragraph 74.

75. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 75, and on that basis denies each and every allegation contained therein.

76. Defendant denies the allegations contained in paragraph 76.

1 77. Defendant denies the allegations contained in paragraph 77.

2 78. Defendant admits that it requested information from the bank of at least one of  
3 the named plaintiffs in this lawsuit in discharging its administrative responsibilities to the  
4 Santa Clara County District Attorney, as directed by the District Attorney's Office and  
5 pursuant to statute. Defendant denies the remaining allegations contained in paragraph 78.

6 79. Defendant denies the allegations contained in paragraph 79, including in its  
7 subparts.

8 80. Defendant denies the allegations contained in paragraph 80, including in its  
9 subparts.

10 81. Defendant denies the allegations contained in paragraph 81.

11 82. Defendant denies the allegations contained in paragraph 82.

12 83. Defendant denies the allegations contained in paragraph 83.

13 84. Defendant is without sufficient knowledge or information to form a belief as to  
14 the truth of the allegations contained in paragraph 84, and on that basis denies each and every  
15 allegation contained therein.

16 85. Defendant denies the allegations contained in paragraph 85.

17 86. Defendant denies the allegations contained in paragraph 86.

18 87. Defendant admits that it has contracted with district attorneys in California  
19 counties to administer misdemeanor bad check restitution programs. Defendant denies the  
20 remaining allegations contained in paragraph 87.

21 88. Defendant denies the allegations contained in paragraph 88.

22 89. Defendant denies a validation notice as set forth in 15 U.S.C. § 1692g(a) was  
23 required to accompany the letters, which were admittedly sent without such notice. Defendant  
24 denies the remaining allegations contained in paragraph 89.

25 90. Defendant denies a warning as set forth in 15 U.S.C. § 1692e(11) was required

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1 to accompany the letters, which were admittedly sent without such notice. Defendant denies  
2 any remaining allegations contained in paragraph 90.

3 91. Defendant denies the allegations contained in paragraph 91.

4 92. Defendant denies the allegations contained in paragraph 92.

5 93. Defendant denies the allegations contained in paragraph 93.

6 94. Defendant denies the allegations contained in paragraph 94.

7 95. Defendant denies the allegations contained in paragraph 95.

8 96. Defendant admits that partial payments are distributed pursuant to the terms of  
9 its contracts with district attorneys. Defendant denies the remaining allegations contained in  
10 paragraph 96.

11 97. Defendant denies the allegations contained in paragraph 97.

12 98. Defendant admits that this case purports to be brought as a class action, but  
13 denies that the case is appropriate for class certification and denies the remaining allegations  
14 contained in paragraph 98.

15 99. Defendant denies the allegations contained in paragraph 99.

16 100. Defendant denies the allegations contained in paragraph 100, including in its  
17 subparts.

18 101. Defendant denies the allegations contained in paragraph 101.

19 102. Defendant denies the allegations contained in paragraph 102.

20 103. Defendant denies the allegations contained in paragraph 103.

21 104. Defendant denies the allegations contained in paragraph 104, including in its  
22 subparts.

23 105. Defendant admits that plaintiffs request class certification, but denies that the  
24 case is appropriate for class certification and denies the remaining allegations contained in  
25 paragraph 105.

1       106. Defendant incorporates all responses previously asserted as though set forth  
2 herein.

3       107. Defendant admits that Article I, Section 1 of the California Constitution speaks  
4 for itself, but denies that it applies to this case. Defendant denies the remaining allegations  
5 contained in paragraph 107.

6       108. Defendant denies the allegations contained in paragraph 108.

7       109. Defendant admits that an example "Request for Information" is attached as  
8 Exhibit 16 to the complaint. Defendant denies the remaining allegations contained in  
9 paragraph 109.

10       110. Defendant admits that it has contracted with district attorneys in California  
11 counties to administer misdemeanor bad check restitution programs, and that pursuant to  
12 statute some district attorneys direct Defendant to request bank records under specified  
13 circumstances. Defendant denies the remaining allegations contained in paragraph 110, which  
14 are legal conclusions.

15       111. Defendant denies the allegations contained in paragraph 111, which are legal  
16 conclusions.

17       112. Defendant admits that Cal. Govt. Code § 7480(b) speaks for itself, and denies  
18 the allegations contained in paragraph 112, which are legal conclusions.

19       113. Defendant denies the allegations contained in paragraph 113.

20       114. Defendant is without sufficient knowledge or information to form a belief as to  
21 the truth of the allegations contained in paragraph 114, and on that basis denies each and every  
22 allegation contained therein.

23       115. Defendant is without sufficient knowledge or information to form a belief as to  
24 the truth of the allegations contained in paragraph 115, and on that basis denies each and every  
25 allegation contained therein.

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116. Defendant admits that it has contracted with district attorneys in California counties to administer misdemeanor bad check restitution programs, and that pursuant to statute some district attorneys direct Defendant to request bank records under specified circumstances. Defendant denies any remaining allegations contained in paragraph 116.

117. Defendant incorporates all responses previously asserted as though set forth herein.

118. Defendant denies the allegations contained in paragraph 118, including in its subparts, with the following exceptions:

118(a). Defendant denies a validation notice as set forth in 15 U.S.C. § 1692g(a) was required to accompany letters from the Santa Clara County District Attorney Bad Check Restitution Program, which were admittedly sent without such notice. Defendant denies the remaining allegations contained in paragraph 118(a).

118(b). Defendant denies a warning as set forth in 15 U.S.C. § 1692e(11) was required in letters from the Santa Clara County District Attorney Bad Check Restitution Program, which were admittedly sent without such warning. Defendant denies the remaining allegations contained in paragraph 118(b).

119. Defendant incorporates all responses previously asserted as though set forth herein.

120. Defendant admits the allegations contained in paragraph 120, but denies that plaintiffs have stated a claim or are entitled to any relief under CUBPA.

121. Defendant denies the allegations contained in paragraph 121.

122. Defendant denies the allegations contained in paragraph 122.

123. Defendant denies the allegations contained in paragraph 123.

124. Defendant denies the allegations contained in paragraph 124.

125. Defendant denies the allegations contained in paragraph 125.

- 1       126. Defendant denies the allegations contained in paragraph 126.
- 2       127. Defendant denies the allegations contained in paragraph 127.
- 3       128. Defendant incorporates all responses previously asserted as though set forth
- 4 herein.
- 5       129. Defendant denies the allegations contained in paragraph 129.
- 6       130. Defendant denies the allegations contained in paragraph 130.
- 7       131. Defendant incorporates all responses previously asserted as though set forth
- 8 herein.
- 9       132. Defendant denies the allegations contained in paragraph 132, but admits that
- 10 Cal. Penal Code §§ 1001.60 *et seq.* speaks for itself.
- 11       133. Defendant denies the allegations contained in paragraph 133, but admits that
- 12 Cal. Penal Code §§ 1001.65 speaks for itself.
- 13       134. Defendant denies the allegations contained in paragraph 134.
- 14       135. Defendant denies the allegations contained in paragraph 135.
- 15       136. Defendant denies the allegations contained in paragraph 135.
- 16       137. Defendant denies the allegations contained in paragraph 137.
- 17       138. Defendant incorporates all responses previously asserted as though set forth
- 18 herein.
- 19       139. Defendant denies the allegation contained in paragraph 139, which is a legal
- 20 conclusion.
- 21       140. Defendant denies the allegations contained in paragraph 140.
- 22       141. Defendant denies the allegations contained in paragraph 141.
- 23       142. Defendant denies the allegations contained in paragraph 142.

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**AFFIRMATIVE DEFENSES**

**I.**

Plaintiffs' Amended Consolidated Complaint fails to state a claim upon which relief can be granted.

**II.**

The court should abstain from exercising jurisdiction over this case based upon principles of federalism and comity.

**III.**

Subject matter jurisdiction is lacking with respect to plaintiffs' federal law claims and the court should decline to exercise supplemental jurisdiction over the state law claims.

**IV.**

Plaintiffs' claims can not and should not be maintained as a class action because those claims fail to meet the necessary requirements for certification as a class or collective action, including, *inter alia*, numerosity, commonality, typicality, predominance, superiority, adequacy of the class representatives, adequacy of class counsel, and similarity.

**V.**

Neither plaintiffs' claims, nor those claims of the purported members of the putative classes as defined, based on the facts alleged in the Amended Consolidated Complaint, are governed by the FDCPA. Accordingly, for this and other reasons, plaintiffs' claims, or some of them, and those of the putative classes, or some of them, are barred in whole or in part because plaintiffs lack standing.

**VI.**

Neither plaintiffs' claims, nor those claims of the purported members of the putative classes as defined, based on the facts alleged in the Amended Consolidated Complaint, are governed by CUBPA. Accordingly, for this and other reasons, plaintiffs' claims, or some of

1 them, and those of the putative classes, or some of them, are barred in whole or in part because  
2 plaintiffs lack standing.

### 3 VII.

4 Plaintiffs' claims and the claims of each purported member of the putative classes as  
5 defined, are barred in whole or in part by the doctrine of laches.

### 6 VIII.

7 Plaintiffs' claims and the claims of each purported member of the putative classes as  
8 defined, are barred in whole or in part by the doctrine of unclean hands.

### 9 IX.

10 Plaintiffs' damages, if any, are the result of their own acts or omissions and cannot be  
11 attributed to the acts or omissions of defendant.

### 12 X.

13 Plaintiffs' claims and the claims of each purported member of the putative classes as  
14 defined, are barred in whole or in part because plaintiffs and said putative class members  
15 knowingly and voluntarily submitted to the actions alleged in the Amended Consolidated  
16 Complaint.

### 17 XI.

18 To the extent the FDCPA is found to apply to defendant (which application is denied),  
19 any violation of the FDCPA was unintentional and resulted from a *bona fide* error  
20 notwithstanding the maintenance of procedures reasonably adopted to avoid such error.

### 21 XII.

22 To the extent the FDCPA is found to apply to defendant (which application is denied),  
23 defendant is specifically exempted from liability under the FDCPA

### 24 XIII.

25 Plaintiffs' claims for equitable relief and those equitable relief claims of each purported  
26

1 member of the putative classes as defined, or some of them, are barred in whole or in part  
 2 because, based on the facts in the Amended Consolidated Complaint, equitable relief is  
 3 unavailable.

#### 4 XIV.

5 Plaintiffs' claims and the claims of each purported member of the putative classes as  
 6 defined, or some of them, based on the facts alleged in the Amended Consolidated  
 7 Complaint, are barred in whole or in part, because of the applicable statute of limitations.

#### 8 XV.

9 Plaintiffs' claims and the claims of each purported member of the putative classes as  
 10 defined, or some of them, based on the facts alleged in the Amended Consolidated Complaint,  
 11 are barred in whole or in part, because of the Eleventh Amendment to the U.S. Constitution.

#### 12 XVI.

13 Plaintiffs' claims and the claims of each purported member of the putative classes as  
 14 defined, or some of them, based on the facts alleged in the Amended Consolidated Complaint,  
 15 are limited in whole or in part, because plaintiffs themselves were careless and negligent and  
 16 contributed to the proximate cause of their alleged losses, and any recovery by plaintiffs  
 17 should be reduced or eliminated based upon principles of comparative fault.

#### 18 XVII.

19 Plaintiffs' claims and the claims of each purported member of the putative classes as  
 20 defined, or some of them, based on the facts alleged in the Amended Consolidated Complaint,  
 21 are limited in whole or in part, because plaintiffs failed to reasonably mitigate their losses,  
 22 which mitigation would have occurred had plaintiffs acted with reasonable diligence.

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**DEMAND FOR JURY TRIAL**

Defendant demands a jury trial.

Dated: January 3, 2007

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By: 

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